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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARY JANE ANDERSON, B&L TRUCKING,
BOARDMAN WARREN BROWN, BUFFELEN
WOODWORKING COMPANY, CAMILLE FIETLAND,
CITY OF TACOMA/DEPARTMENT OF PUBLIC
UTILITIES, CITY OF TACOMA, DUNLAP TOWING
COMPANY, EXECUTIVE BARK, HYLEBOS MARINA,
INC., JUDY JOHNSON, LOUISIANA-PACIFIC CORP.,
MANKE LUMBER COMPANY, INC., MCFARLAND
CASCADE HOLDINGS, INC., MODUTECH
MARINE, INC., MURRAY PACIFIC CORP.,
OLIN CORPORATION, RON OLIN, PAN PACIFIC
TRADING, RAIL & LOCOMOTIVE EQUIPMENT CO.,
JOSEPH SIMON & SONS, SOUND REFINING, INC.,
SRS PROPERTIES, ESTATE OF LESLIE P. SUSSMAN,
SOPHIE SUSSMAN, CARL AND ELAINE SWINDAHL,

Defendants.

CIVIL ACTION NO.
C03-5107 *RBI*
FDB

CONSENT DECREE

HYLEBOS WATERWAY
PROBLEM AREAS

CONSENT DECREE
Commencement Bay Nearshore/Tideflats
Superfund Site

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044



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1 I. BACKGROUND

2 A. As a result of the release or threatened release of hazardous substances at or from
3 the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington ("CB/NT Site"), the U.S. Environmental Protection Agency ("EPA") and
5 other governmental and private entities have undertaken response actions at or in connection
6 with the CB/NT Site under Section 104 and Section 106 of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§
8 9604 and 9606, and will undertake response actions in the future. In performing these
9 response actions, EPA and other governmental and private entities have incurred and will
10 continue to incur Response Costs at or in connection with the CB/NT Site.

11 B. On September 8, 1983, EPA placed the CB/NT Site on the National Priorities List
12 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

13 C. Under a Cooperative Agreement with EPA, the Washington Department of
14 Ecology (Ecology) conducted a Remedial Investigation and Feasibility Study (RI/FS) of the
15 CB/NT Site. Within the Tideflats area of the CB/NT Site, the RI/FS evaluated the nature and
16 extent of contamination in the Sitcum, Blair, Milwaukee, Hylebos, St. Paul, Middle, Thea
17 Foss (formerly known as City), and Wheeler-Osgood Waterways. Pursuant to Section 117 of
18 CERCLA, 42 U.S.C. § 9617, EPA published notice of completion of the Feasibility Study
19 and of the proposed plan for remedial action for the CB/NT Site in February 1989.

20 D. Because of the complexity of the CB/NT Site, Superfund response actions at the
21 CB/NT Site are currently coordinated under seven operable units managed primarily by EPA
22 and Ecology, including: (1) Operable Unit 01 - CB/NT Sediments; (2) Operable Unit 02 -
23 ASARCO Tacoma Smelter; (3) Operable Unit 03 - Tacoma Tar Pits; (4) Operable Unit 04 -

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1 ASARCO Off-Property; (5) Operable Unit 05 - CB/NT Sources; (6) Operable Unit 06 -
2 ASARCO Sediments; and (7) Operable Unit 07 - ASARCO demolition.

3 E. On September 30, 1989, EPA issued a Record of Decision (ROD) that selected the
4 remedy for remediation of sediments, OU1, and sources of contamination, OU5. The ROD
5 identified eight (8) problem areas within OU1 that required sediment cleanup. The eight
6 problem areas were the Head and Mouth of the Hylebos Waterway, Sitcum Waterway, St.
7 Paul Waterway, Middle Waterway, Head and Mouth of the Thea Foss Waterway (formerly
8 City Waterway), and Wheeler-Osgood Waterway. Notice of the final plan was published in
9 accordance with Section 117(b) of CERCLA.

10 F. EPA determined in the ROD that there were five major elements of the selected
11 remedy for the CB/NT Site sediments and sources that will be applied, as appropriate, to each
12 problem area:

- 13 i. Site Use Restrictions - To protect human health by limiting access to edible
14 resources prior to and during implementation of source and sediment remedial
15 activities.
- 16 ii. Source Control - To be implemented to prevent recontamination of sediments.
- 17 iii. Natural Recovery - Included as a preferred remediation strategy for marginally
18 contaminated sediments that are predicted to achieve acceptable sediment quality
19 through either biodegradation, or burial and mixing with naturally accumulating clean
20 sediments within a ten (10) year period.
- 21 iv. Sediment Remedial Action - To address sediments containing contamination that
22 is not expected to naturally recover within 10 years. The ROD required active
23 sediment cleanup using one of the following four technologies: in-place capping,

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1 dredging and confined aquatic disposal, dredging and nearshore disposal, or dredging
2 and upland disposal. The disposal option is to be identified during design of the
3 remedial action.

4 v. Source and Sediment Monitoring - To refine cleanup volume estimates,
5 characterize the effectiveness of source controls, and implement long-term monitoring
6 of the remedial action(s) to ensure long-term protectiveness of the remedy.

7 G. Under a State Cooperative Agreement, EPA and the Washington Department of
8 Ecology agreed that Ecology would implement OU5 source control actions using state law
9 authorities and EPA would stay in the lead for implementing the sediment cleanup, OU1.

10 H. This Consent Decree involves settlement of claims for recovery of Response Costs
11 associated with the Mouth and Head of the Hylebos Waterway Problem Areas. The ROD
12 determined that natural recovery will not sufficiently reduce contaminant concentrations in
13 some areas of the Mouth and Head of the Hylebos Waterway within the ten (10) year period,
14 so the ROD required active sediment cleanup with one (1) of the four (4) technology options
15 of the remedy.

16 I. On November 29, 1993, six entities (collectively known as the Hylebos Cleanup
17 Committee or "HCC") entered into an Administrative Order on Consent ("HCC AOC") with
18 EPA for the preparation of, performance of, and reimbursement of oversight costs for Pre-
19 remedial Design Activities for the Hylebos Waterway Problem Areas. The objectives of the
20 HCC AOC were: (1) to perform pre-remedial design work for the Hylebos Waterway
21 consistent with the ROD; (2) to perform analyses and studies needed by EPA to select a
22 Remediation Plan, including an acceptable confined disposal site and any necessary mitigation
23 which attains Sediment Quality Objectives identified in the ROD, and all applicable or
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1 relevant and appropriate requirements; and (3) provide for recovery by EPA of its response
2 and oversight costs incurred with respect to the implementation of this Order. By letter dated
3 November 8, 2001, EPA confirmed that all activities required by the HCC Order were
4 performed, except remaining oversight billings, in accordance with Section XXVI of the HCC
5 Order.

6 J. On August 3, 2000, EPA issued an Explanation of Significant Differences (ESD),
7 in compliance with Section 117(c) of CERCLA, that explains differences in the Remedial
8 Action that significantly change, but do not fundamentally alter, the remedy selected in the
9 ROD. The ESD addressed cleanup plans for two waterways within the CB/NT Site, selected
10 disposal sites for all remaining contaminated sediment to be dredged and confined from the
11 CB/NT Site, provided additional performance standards, and documented other differences
12 from the ROD. Based on the studies and analysis conducted under the HCC AOC with
13 respect to the Hylebos Waterway, the ESD provides details for: the cleanup of the areal extent
14 of sediment contamination in the Hylebos Waterway and the estimated volume of sediment
15 that requires remediation; designation of areas that are projected to naturally recover within 10
16 years of remedial action; EPA's decision to dispose of contaminated sediments in Blair Slip 1
17 and an upland regional landfill; performance standards for mitigation for the Remedial
18 Action; and the estimated cost of the Remedial Action at the Hylebos Waterway. Notice and
19 public comment were taken on the ESD and notice of the final ESD was published in
20 accordance with Section 117(c) of CERCLA.

21 K. Certain of the Settling Defendants and other parties entered into an allocation
22 agreement which established a process by which a third-party, neutral allocator would
23 determine shares of liability for all potentially responsible parties associated with the Hylebos
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1 Waterway Problem Areas. The allocator's report, titled "Hylebos Waterway-Allocator's Final
2 Cost Allocation Formula Report, dated May 22, 2000 ("Allocator's Report"), assessed the
3 Settling Defendants' and Settling Federal Agencies' share of Response Costs and formed a
4 basis for this settlement. EPA independently reviewed the Allocator's Reports and other
5 pertinent information, and, as to the Settling Defendants and Settling Federal Agencies only,
6 accepts the allocator's numerical allocation for purposes of this settlement.

7 L. The Settling Defendants do not admit any liability arising out of the transactions or
8 occurrences alleged to have occurred in connection with the Hylebos Waterway Problem
9 Areas within the CB/NT Site. The Settling Federal Agencies do not admit any liability arising
10 out of the transactions or occurrences alleged in any counterclaim asserted by the Settling
11 Defendants.

12 M. In a consent decree entered in the U.S. District Court for the Western District of
13 Washington on May 28, 1997 in United States, et al. v. the City of Tacoma and the Tacoma
14 Public Utility, Civil Action No. C97-5336 RJB, the City of Tacoma and Tacoma Public
15 Utilities resolved their liability for damages for injury to natural resources under federal, state
16 and tribal trusteeship resulting from the release of hazardous substances at the CB/NT Site.

17 N. The United States and Settling Defendants agree, and by entering this Consent
18 Decree, this Court finds that settlement without further litigation and without the admission or
19 adjudication of any issue of fact or law is in the public interest and is the most appropriate
20 means of resolving this action with respect to Settling Defendants, and that this Consent
21 Decree is fair, reasonable, and in the public interest.

22 THEREFORE, with the consent of the Parties to this Consent Decree, it is
23 ORDERED, ADJUDGED, and DECREED:

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II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon and inures to the benefit of the United States and the Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree. This Consent Decree does not bind any person or State agency that is not a party to it.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, by allowing Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 for injunctive relief with regard to the Hylebos Waterway Problem Areas, and for Response Costs incurred and to be incurred at or in connection with the Hylebos Waterway Problem Areas, except the reimbursement claims for cost overruns reserved against Settling Defendants which pay a 50% premium and subject to the Reservation of Rights by the United States in Section XI; and to resolve the claims of the

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1 Settling Defendants which have been or could have been asserted against the United States
2 with regard to this Site as provided in this Consent Decree, thereby reducing litigation relating
3 to the Hylebos Waterway Problem Areas;

4 b. to simplify any remaining administrative and judicial enforcement activities
5 concerning the Hylebos Waterway Problem Areas by reducing the number of potentially
6 responsible parties from further involvement at the Hylebos Waterway Problem Areas with
7 respect to Response Costs; and

8 c. to obtain settlement with Settling Defendants and Settling Federal Agencies
9 for reimbursement of a portion of Response Costs incurred and to be incurred at or in
10 connection with the Hylebos Waterway Problem Areas by the EPA Hazardous Substance
11 Superfund and by private parties, and to provide for contribution protection for Settling
12 Defendants and the United States with regard to the Response Costs, pursuant to Sections
13 113(f)(2) and 122 of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622, and as set forth in
14 Paragraph 32 of this Consent Decree.

15 V. DEFINITIONS

16 4. Unless otherwise expressly provided herein, terms used in this Consent Decree that
17 are defined in CERCLA or in regulations promulgated under CERCLA shall have the
18 meaning assigned to them in the statute or regulations. Whenever the terms listed below are
19 used in this Consent Decree, the following definitions shall apply:

20 a. "CERCLA" shall mean the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

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1 b. "Consent Decree" or "Decree" shall mean this Consent Decree and all
2 appendices attached hereto. In the event of conflict between this Consent Decree and any
3 appendix, the Consent Decree shall control.

4 c. "Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT Site")
5 shall mean the entire Commencement Bay Nearshore/Tideflats Superfund Site and project
6 area, including contaminated sediments and sources of contamination within the CB/NT Site,
7 located in the City of Tacoma, Pierce County, Washington, and as defined in the CB/NT
8 Record of Decision, dated September 30, 1989.

9 d. "Day" shall mean a calendar day. In computing any period of time under
10 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
11 the period shall run until the close of business of the next working day.

12 e. "EPA" shall mean the United States Environmental Protection Agency and
13 any successor departments, agencies, or instrumentalities.

14 f. "EPA Hazardous Substance Superfund" shall mean the Hazardous
15 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

16 g. "Escrow Account" shall mean the interest-bearing private trust established
17 by the Settling Defendants pursuant to this Consent Decree.

18 h. "Hylebos Waterway Problem Areas" and/or "Site" shall mean all areas in
19 which contaminated sediments are located, intertidal and subtidal, that require remedial action
20 at and adjacent to the Mouth and the Head of the Hylebos Waterway, which are two of eight
21 Problem Areas only within OU1 of the CB/NT Site. These Problem Areas are described in
22 the CB/NT Site Record of Decision, dated September 30, 1989, and are more specifically
23 delineated in the Figures 3A, 3B, and 3C in the August 3, 2000 ESD. These terms do not
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1 include Area 5106 which is specifically designated in an Action Memorandum dated July 6,
2 2001, and property which is the subject of OU5, which encompasses upland properties
3 adjacent to the Hylebos Waterway that are past, present or future sources of hazardous
4 substances to the Hylebos Waterway Problem Areas.

5 i. "Hylebos Waterway Problem Areas Special Account" shall mean the
6 special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42
7 U.S.C. §9622(b)(3), and created by the Consent Decree entered in U.S. v. Bay Chemical
8 Company, et al, C99-5521 (RJB), by the U.S. District Court for the Western District of
9 Washington on June 23, 2000.

10 j. "Interest" shall mean interest at the current rate specified for interest on
11 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
12 compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The
13 applicable rate of interest shall be the rate in effect at the time the interest accrues.

14 k. "Owner Settling Defendants" shall mean those parties identified in
15 Appendix A as Owner Settling Defendants , or those Settling Defendants on Appendix A that
16 may be identified during remedial design as a person who owns or controls a portion of the
17 Hylebos Waterway Problem Areas or property on or at which response action will be taken or
18 that is needed for the implementation of response action at the Site.

19 l. "Paragraph" shall mean a portion of this Consent Decree identified by an
20 Arabic numeral or an upper or lower case letter.

21 m. "Parties" shall mean the United States and the Settling Defendants.

22 n. "Section" shall mean a portion of this Consent Decree identified by a
23 roman numeral.

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1 o. "Settling Defendants" shall mean those persons, corporations, state or local
2 government agencies, departments or instrumentalities or other entities listed in Appendix A,
3 including Owner Settling Defendants..

4 p. "Settling Federal Agencies" shall mean those departments, agencies, and
5 instrumentalities of the United States identified in Appendix A, which are resolving any
6 claims which have been or could be asserted against them with regard to this Site as provided
7 in this Consent Decree.

8 q. "Record of Decision" or "ROD" shall mean the EPA Record of Decision
9 relating to the Site signed on September 30, 1989, by the Regional Administrator, EPA
10 Region 10, all attachments thereto and incorporating all significant differences thereto
11 documented in the ESD issued on July 28 , 1997 and the ESD issued on August 3, 2000. The
12 2000 ESD may be referred to or discussed individually or separately from the 1989 ROD in
13 this Consent Decree where appropriate.

14 r. "Response Costs" shall mean all costs of "response" as that term is defined
15 by Section 101(25) of CERCLA, 42 U.S.C. §9601(25), and incurred in connection to the
16 Hylebos Waterway Problem Areas. Response Costs shall also include any CB/NT area-wide
17 site costs billed to the CB/NT area-wide account that EPA may attribute or allocate to the
18 Hylebos Waterway Problem Areas. Response Costs shall not include costs related to upland
19 hazardous waste cleanups and/or source control which were incurred by any entity. The
20 phrase "past Response Costs" shall mean all costs incurred through September 30, 2001,
21 including interest thereon. The phrase "future Response Cost" shall mean all Response Costs
22 other than past Response Costs.

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1 s. "United States" shall mean the United States of America, including all of
2 its departments, agencies, and instrumentalities, which includes without limitation EPA, the
3 Settling Federal Agencies and any federal natural resources trustee.

4 VI. PAYMENT

5 5. Payment.

6 a. Within forty-five (45) days of entry of this Consent Decree, each Settling
7 Defendant shall pay the amounts set forth for that Settling Defendant in Appendix B or C to
8 this Consent Decree (the "Total Payment Amount") into the Escrow Account described in
9 Paragraph 7 below.

10 b. As soon as reasonably practicable after the effective date of this Consent
11 Decree, the United States, on behalf of the Settling Federal Agencies, shall:

12 i) Pay to the Escrow Account established under Paragraph 7 below,
13 the Total Payment Amount provided in Appendix C to this Consent Decree, in reimbursement
14 of past and future Response Costs which payment includes a premium payment for Future
15 Response Costs.

16 ii) If the payment to the escrow account required by this subparagraph
17 is not made as soon as reasonably practicable, the Director or Deputy Director of the
18 Environmental Cleanup Office may raise any issues relating to payment to the appropriate
19 DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this
20 payment is not made within 120 days after the effective date of this Consent Decree, EPA and
21 DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement
22 dated December 28, 1998.

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1 6. Each Settling Defendant's and Settling Federal Agency's payment includes an
2 amount for:

3 a. past Response Costs incurred at or in connection with the Hylebos
4 Waterway Problem Areas; and

5 b. future Response Costs to be incurred at or in connection with the Site; and
6 c. either as follows:

7 i) A one hundred percent (100%) premium to cover the risks and
8 uncertainties associated with this settlement, including but not limited to, the risk that total
9 Response Costs incurred or to be incurred in connection with the Hylebos Waterway Problem
10 Areas, by any entity, will exceed the cost estimate for future Response Costs of \$56,056,407
11 million or exceed the amount other PRPs can contribute (Settling Defendants who have
12 selected the 100% premium are listed in Appendix B); or

13 ii) A fifty percent (50%) premium to cover the risks and uncertainties
14 associated with this settlement, including but not limited to, the risk that total Response Costs
15 incurred or to be incurred in connection with the Hylebos Waterway Problem Areas, by any
16 entity, will exceed the cost estimate for future Response Costs of \$56,056,407 million or
17 exceed the amount other PRPs can contribute (Settling Defendants who have selected the 50%
18 premium and the United States on behalf of the Settling Federal Agencies are listed in
19 Appendix C). EPA expressly reserves the right to recover further proportionate Response
20 Costs in accordance with the formulae contained in Appendix C from Settling Defendants
21 listed in Appendix C and the Settling Federal Agencies who selected this 50% premium in the
22 event actual total future Response Costs exceed the cost estimate for future Response Costs of
23 \$56,056,407.

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1 7. Escrow Account.

2 a. Settling Defendants shall establish an interest-bearing Escrow Account no
3 later than ten (10) days after the date of lodging of this Consent Decree.

4 b. The escrow agreement, which will establish and govern the Escrow
5 Account, is provided in Appendix D.

6 c. The purpose of the Escrow Account is to receive payments from Settling
7 Defendants and Settling Federal Agencies, as is provided in Paragraph 5, to earn interest, and
8 to provide funds to finance response actions taken or to be taken at or in connection with the
9 Hylebos Waterway Problem Areas. The funds shall be disbursed from the Escrow Account in
10 accordance the escrow agreement under conditions which are described in paragraph 7(d)
11 below. Under the terms of the escrow agreement, EPA , in its sole discretion, shall
12 determine whether the conditions for distribution of the Escrow Account proceeds for
13 performance of response actions have been met, and EPA will provide notice to the escrow
14 agent as to the distribution of the funds in the Escrow Account. Settling Defendants are not
15 eligible to receive any funds from the Escrow Account.

16 d. The escrow agreement provides that if the United States and parties
17 performing the remedial action for the Hylebos Waterway Problem Areas sign a consent
18 decree (hereinafter "RD/RA" consent decree"), and that RD/RA consent decree is entered by
19 the United States District Court, the funds in the Escrow Account shall be disbursed to EPA
20 and/or such performing parties in accordance with directions set forth in the RD/RA consent
21 decree. Notwithstanding the preceding sentence, the Escrow Account shall not retain funds
22 for more than eighteen (18) months from the Effective Date of this Decree. At the conclusion
23 of eighteen (18) months after the Effective Date, all funds remaining in the Escrow Account,

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1 including interest, shall be disbursed to EPA. All disbursements to EPA from the Escrow
2 Account made pursuant to this Paragraph or the Escrow Agreement shall be made by certified
3 or cashier's check or wire transfer made payable to "EPA Hazardous Substance Superfund"
4 and shall be deposited in the Hylebos Waterway Problem Areas Special Account within the
5 EPA Hazardous Substance Superfund to be retained and used to conduct or finance the
6 response action at or in connection with the Hylebos Waterway Problem Areas. After
7 certification of completion of the Hylebos Waterway remedial action, any balance remaining
8 in the Hylebos Waterway Problem Areas Special Account shall be transferred by EPA to the
9 EPA Hazardous Substance Superfund.

10 8. At the time of payment under Paragraph 5 or, if applicable Paragraph 10 below,
11 each Settling Defendant shall send notice that such payment has been made to:

12 Chief, Environmental Enforcement Section
13 United States Department of Justice
14 DJ No. 90-11-2-726
15 P.O. Box 7611
Washington, D.C. 20044-7611

16 Lori Houck Cora
17 Assistant Regional Counsel
18 Office of Regional Counsel
19 United States Environmental Protection Agency, Region 10
20 ORC-158, 1200 Sixth Avenue
21 Seattle, Washington 98101

22 Peter Contreras
23 Remedial Project Coordinator
24 United States Environmental Protection Agency, Region 10
25 ECL-113
26 1200 Sixth Avenue
27 Seattle, Washington 98101

28 Ruth Broome, Finance Section

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1 United States Environmental Protection Agency, Region 10
2 OMP-146
3 1200 Sixth Avenue
4 Seattle, Washington 98101

5 9. The Parties to this Consent Decree recognize and acknowledge that the payment
6 obligations of the Settling Federal Agencies under this Consent Decree can only be paid from
7 appropriated funds legally available for such purpose. Nothing in this Consent Decree shall
8 be interpreted or construed as a commitment or requirement that any Settling Federal Agency
9 obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
10 other applicable provision of law.

11 VII. FAILURE TO COMPLY WITH CONSENT DECREE

12 10. a. If any Settling Defendant fails to make full payment of its Total Payment
13 Amount specified in Appendix B or C within the time required by Paragraph 5, Interest shall
14 begin to accrue on the effective date of this Consent Decree on that Settling Defendant's
15 unpaid balance through the date of payment, and that Settling Defendant shall pay stipulated
16 penalties of \$1,000 per day for each day such payment is late.

17 b. Stipulated penalties are due and payable within 30 days of the date of the demand
18 for payment of the penalties by EPA. All payments of stipulated penalties made under this
19 Paragraph shall be identified as "stipulated penalties" and shall be made by certified or
20 cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be
21 deposited in the Hylebos Waterway Problem Areas Special Account within the EPA
22 Hazardous Substance Superfund to be retained and used to conduct or finance the response
23 action at or in connection with the Hylebos Waterway Problem Areas. After certification of
24 completion of the Hylebos Waterway remedial action, any balance remaining in the Hylebos

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1 Waterway Problem Areas Special Account shall be transferred by EPA to the EPA Hazardous
2 Substance Superfund. The check, or the letter accompanying the check, shall reference the
3 name and address of the party(ies) making the payment, the Site name, the site/spill
4 identification numbers 108N and 107C, and DOJ Case Number 90-11-2-726 and shall be sent
5 to:

6 U.S. Environmental Protection Agency
7 Region 10 Superfund Accounting
8 P.O. Box 360903M
9 Pittsburgh, Pennsylvania 15251

10 11. If any Settling Defendant fails to comply with any requirement contained in
11 Section IX (Access/Institutional Controls/Responsibility for Dock and Structure Repair) the
12 United States may, in addition to any other available remedies or sanctions, bring an action
13 against that Settling Defendant seeking injunctive relief to compel compliance and/or seeking
14 civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to comply
15 with this Consent Decree.

16 12. If the United States brings an action to enforce this Consent Decree against a
17 Settling Defendant, that Settling Defendant shall reimburse the United States for all costs of
18 such action, including but not limited to costs of attorney time. Payments made under this
19 Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue
20 of such Settling Defendants' failure to comply with the requirements of this Consent Decree.
21 Notwithstanding any other provision of this Section, the United States may, in its
22 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
23 accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
24 such Settling Defendants from payment as required by Section VI. or from performance of any
25 other requirements of this Consent Decree.

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VIII. CERTIFICATION OF SETTLING DEFENDANTS
AND SETTLING FEDERAL AGENCIES

13. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA and/or the Allocator, all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to identifying who owned, operated, or controlled the Site, or (2) to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. no information that would suggest that its contributions of hazardous substances, pollutants, or contaminants to one or both of the Hylebos Waterway Problem Areas was greater or significantly different than determined in the Allocator Report;

c. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

d. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

14. The certifications contained in Paragraph 13 inure only to the benefit of the United States and the Settling Defendants, and not to any other parties.

15. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section

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1 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of RCRA,
2 42 U.S.C. § 6927.

3
4 IX. ACCESS/INSTITUTIONAL CONTROLS /RESPONSIBILITY
5 FOR DOCK AND STRUCTURE REPAIR

6 16. If any portion of the the Hylebos Waterway Problem Areas, or any property
7 within the vicinity of the Hylebos Waterway where access and/or land or water use restrictions
8 are needed to implement response actions related to the Hylebos Waterway Problem Areas, is
9 owned or controlled by a Settling Defendant then such Settling Defendant shall:

10 a. commencing on the date of lodging of this Consent Decree, provide the
11 United States and the State, and their representatives, including EPA and its contractors, and
12 any person and its representatives who are performing response actions under an order or
13 agreement with EPA, with access at all reasonable times to the Hylebos Waterway Problem
14 Areas, or property in the vicinity of the Hylebos Waterway, for the purpose of conducting any
15 activity related to the response action, including, but not limited to, the following activities:

- 16 i) Monitoring the response action;
17 ii) Verifying any data or information submitted to the United States;
18 iii) Conducting investigations relating to contamination at or near the
19 CB/NT Site or Hylebos Waterway Problem Areas;
20 iv) Obtaining samples;
21 v) Assessing the need for, planning, or implementing additional
22 response actions at or near the CB/NT Site or Hylebos Waterway Problem Areas;
23 vi) Implementing the response action;

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1 vii) Investigating whether the Hylebos Waterway Problem Areas, or
2 other property is being used in a manner that is prohibited or restricted, or that may need to be
3 prohibited or restricted to maintain the effectiveness of the remedy selected in the ROD.

4 b. commencing on the date of lodging of this Consent Decree, and
5 immediately upon receiving notice from EPA or its representative, or any person performing
6 response action under an order or agreement with EPA, refrain from using the Hylebos
7 Waterway Problem Areas, or other property in any manner that may interfere with remedial
8 design or remedial action activities, or may interfere with or adversely affect the
9 implementation, integrity or protectiveness of the remedial measures taken or to be taken
10 related to the Hylebos Waterway Problem Areas so as to achieve the following institutional
11 control objectives:

12 i) reduce potential exposure of marine organisms to contaminated
13 sediments disposed of and confined in aquatic disposal sites or confined by capping; and

14 ii) reduce potential exposure of marine organisms to contaminated
15 sediments left in place in the Hylebos Waterway; and

16 c. thirty (30) days after notice by EPA or its representative, or any person
17 performing remedial action under an order or agreement with EPA, submit a draft restrictive
18 covenant for approval by EPA and within 10 days of EPA approval execute and record in the
19 Recorder's Office or Registry of Deeds or other appropriate office of Pierce County, State of
20 Washington, a restrictive covenant authorized by the Washington Model Toxics Control Act
21 (MTCA) and that complies with the form and content contained in WAC 173-340-440 and is
22 approved by EPA for implementation of institutional controls that are required to assure
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1 continued protection of human health and the environment or the integrity of the remedial
2 action, or other applicable requirements of this Consent Decree.

3 d. Future shoreline development projects or in-water development on Owner
4 Settling Defendants' properties may affect the remedial action. Such projects likely will
5 require local, state, and/or federal permits, licenses, or approvals, which Owner Settling
6 Defendants are responsible to apply for and obtain. In the event a project may affect the
7 remedial action, the Owner Settling Defendant shall notify EPA's Project Coordinator of its
8 proposed project.

9 e. Settling Defendants agree to use all authorities they have to obtain from
10 their tenants, lessees, or other persons that possess a right to occupy any portion of their
11 properties: (1) access for the purposes contained in subparagraph a. of this Section; and (2)
12 implementation of land and/or water use restrictions in accordance with subparagraph b.
13 above.

14 17. EPA acknowledges that Settling Defendants' properties include operating
15 businesses. EPA acknowledges that the right of access should be exercised at reasonable
16 times and in a way which minimizes interference with the operation of those businesses to the
17 extent practicable. EPA, its representatives, or any persons performing response actions under
18 an order or agreement with EPA shall make reasonable efforts to provide ten (10) working
19 days notice of those areas and the times needed to perform response actions on that Settling
20 Defendant's properties to the Settling Defendants, but the lack of such notice shall not alter in
21 any way Settling Defendants' obligation to provide access under this Section.

22 Notwithstanding any provision of this Consent Decree, the United States retains all of its
23 access authorities and rights, as well as all of its rights to require land/water use restrictions,

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1 including enforcement authorities related thereto, under CERCLA, RCRA, and any other
2 applicable statute or regulations.

3 18. In addition to providing access and institutional controls provided above, each
4 Owner Settling Defendant shall participate and cooperate in the remedial design and remedial
5 action with EPA, its representatives, or any persons performing response actions under an
6 order or agreement with EPA to the extent required to facilitate implementation of response
7 actions by others on that Owner Settling Defendant's property within the Hylebos Waterway
8 Problem Area. Each Owner Settling Defendant's participation and cooperation shall include,
9 but not be limited to, the following commitments:

10 a. upon request by EPA, or any person performing response actions under an
11 order or agreement with EPA, attend meetings, review documents, and provide requested
12 information required by the requestor within five (5) days or such longer time that EPA may
13 approve;

14 b. if performance of the response action will degrade or adversely affect the
15 integrity of a bulkhead, pier, dock, piling or other structure on an Owner Settling Defendant's
16 property such that EPA determines such degraded condition poses or is likely to pose a threat
17 to public health or the environment, or may become an obstruction to navigation or otherwise
18 violate state or federal law, such Owner Settling Defendant shall rebuild, renovate, or replace
19 any such degraded structure as directed by and within the time frame required by EPA.

20 c. In accordance with this Section and based on existing information, Sound
21 Refining, Inc. agrees to repair or replace its bulkhead to ensure the effectiveness of the remedy
22 implemented in Sediment Management Area 432 and address any landward cleanup actions, if
23 any, resulting from such repair or replacement. Sound agrees to work cooperatively with

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1 EPA, its contractors or any person performing response actions under an order or agreement
2 with EPA to coordinate bulkhead repair or replacement with the remedial design and remedial
3 action of Sediment Management Area 432. Sound shall select the type or method of bulkhead
4 repair or replacement and its design and construction, consistent with applicable laws.

5 d. Subject to Paragraph 27 in this Consent Decree, nothing herein waives
6 Owner Settling Defendants' claims for property damage caused by negligence of the parties
7 performing the response action.

8 X. COVENANT NOT TO SUE BY UNITED STATES

9 19. Covenant Not to Sue Settling Defendants by United States. In consideration of
10 the payments and commitments that will be made by the Settling Defendants under the terms
11 of the Consent Decree, and except as specifically provided in Paragraphs 21, 22 and 23 of this
12 Section, the United States covenants not to sue or to take administrative action against
13 Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of
14 RCRA relating to the Site. With respect to present and future liability, this covenant not to
15 sue shall take effect for each Settling Defendant upon receipt by the Escrow Account from
16 that Settling Defendant of that Settling Defendant's payments required by Section VI
17 (Payment) and any amount due under Section VII (Failure to Comply with Consent Decree).
18 These covenants are conditioned upon the satisfactory performance by that Settling Defendant
19 of its obligations under this Consent Decree and the veracity of the information provided to
20 EPA and/or the Allocator by that Settling Defendant relating to that Settling Defendant's
21 involvement with the Hylebos Waterway Problem Areas. These covenants not to sue extend
22 only to the Settling Defendants and do not extend to any other person.

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1 20. Covenant for Settling Federal Agencies by EPA. In consideration of the
2 payments that will be made by the Settling Federal Agencies under the terms of the Consent
3 Decree EPA covenants not to take administrative action against the Settling Federal Agencies
4 pursuant to Sections 106 and 107(a) of CERCLA and 7003 of RCRA relating to the Site
5 except as expressly limited in this Paragraph below and in Paragraphs 21, 22, and 23. With
6 respect to present and future liability, this covenant shall take effect for each Settling Federal
7 Agency upon receipt by the Escrow Account from that Settling Federal Agency of that
8 Settling Federal Agency's payments required by Section VI (Payment). EPA's covenant does
9 not include potential administrative claims or action against Settling Federal Agencies for: (1)
10 access to federally-owned property for implementation of response actions, including long-
11 term operation and maintenance; (2) implementation of institutional controls; (3) cooperation
12 in the design and the remedial action by attending meetings and supplying information to
13 facilitate implementation of the remedy; and (4) response actions to rebuild, renovate, or
14 replace degraded structures on federally-owned property that might affect the implementation
15 or performance of the remedy at the Site. EPA's covenant is conditioned upon the satisfactory
16 performance by Settling Federal Agencies of their obligations under this Consent Decree and
17 the veracity of the information provided to EPA by the Settling Federal Agencies relating to
18 the Settling Federal Agencies' involvement with the Hylebos Waterway Problem Areas.
19 EPA's covenant extends only to the Settling Federal Agencies and does not extend to any
20 other person.

21 21. United States' Pre-certification Reservations. Notwithstanding any other
22 provision of this Consent Decree, the United States reserves, and this Consent Decree is
23 without prejudice to, its right to institute proceedings in this action or in a new action, or to
24

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1 issue an administrative order seeking to compel one or more Settling Defendants, and EPA
2 reserves the right to issue an administrative order seeking to compel the Settling Federal
3 Agencies,

4 a. to perform further response actions relating to the Site or

5 b. to reimburse the United States for additional costs of response if, prior to

6 Certification of Completion of the Remedial Action:

7 i) conditions at the Site, previously unknown to EPA, are discovered,

8 or

9 ii) information, previously unknown to EPA, is received, in whole or

10 in part, and these previously unknown conditions or information together with any other

11 relevant information indicates that the Remedial Action is not protective of human health or

12 the environment.

13 22. United States' Post-certification Reservations. Notwithstanding any other
14 provision of this Consent Decree, the United States reserves, and this Consent Decree is
15 without prejudice to, its right to institute proceedings in this action or in a new action, or to
16 issue an administrative order seeking to compel Settling Defendants, and EPA reserves the
17 right to issue an administrative order seeking to compel the Settling Federal Agencies,

18 a. to perform further response actions relating to the Site or

19 b. to reimburse the United States for additional costs of response if,

20 subsequent to Certification of Completion of the Remedial Action:

21 i) conditions at the Site, previously unknown to EPA, are discovered,

22 or

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1 ii) information, previously unknown to EPA, is received, in whole or
2 in part, and these previously unknown conditions or this information together with other
3 relevant information indicate that the Remedial Action is not protective of human health or
4 the environment.

5 23. For purposes of Paragraph 21, the information and the conditions known to EPA
6 shall include only that information and those conditions known to EPA as of the date of the
7 August, 2000 ESD (August 3, 2000) and set forth in the Record of Decision, as modified by
8 the July 1997 and August 2000 ESD, and the administrative records supporting the Record of
9 Decision and the ESD or contained in EPA-approved remedial design documents as of the
10 effective date of this Consent Decree. For purposes of Paragraph 22, the information and the
11 conditions known to EPA shall include only that information and those conditions known to
12 EPA as of the date of Certification of Completion of the Remedial Action and set forth in the
13 Record of Decision, the administrative records supporting the Record of Decision and July,
14 1997 and August, 2000 ESD, the post-ROD administrative record, or in any information
15 received by EPA pursuant to the requirements of an Order or Consent Decree for Remedial
16 Design and Remedial Action with other parties prior to Certification of Completion of the
17 Remedial Action.

18 XI. RESERVATIONS OF RIGHTS BY UNITED STATES

19 24. The covenant not to sue by the United States set forth in Paragraph 19 and the
20 Covenant by EPA in Paragraph 20 do not pertain to any claims other than those expressly
21 specified in Paragraphs 19 and 20, including but not limited to any civil or criminal claims
22 under other statutes or under other Sections of CERCLA. The United States also reserves and
23 this Consent Decree is without prejudice to, all rights against individual Settling Defendants.

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1 and EPA and Federal Natural Resource Trustees reserve, and this Consent Decree is without
2 prejudice to, all rights against Settling Federal Agencies, with respect to the following claims
3 under Section 106 or 107 of CERCLA:

4 a. liability for failure to meet a requirement of this Consent Decree, including,
5 but not limited to payment of stipulated penalties or Interest pursuant to Section VI of this
6 Decree or provision of access, institutional controls, necessary participation and cooperation,
7 or structure repair in the response action pursuant to Section IX of this Decree;

8 b. liability of the Settling Defendants and the United States on behalf of
9 Settling Federal Agencies listed in Appendix C for their proportionate share of future
10 Response Costs under the conditions and in accordance with the terms specified in Section VI,
11 6.c.(ii) of this Decree and Appendix C to this Decree;

12 c. liability arising from the past, present, or future disposal, release, or
13 potential threat of a release of a hazardous substance, pollutant, or contaminant to areas
14 outside of the Hylebos Waterway Problem Areas, including releases to upland properties
15 adjacent to the Hylebos Waterway Problem Areas that have not migrated into the Hylebos
16 Waterway Problem Areas as of the date this Consent Decree is lodged with the Court;

17 d. criminal liability;

18 e. liability for damages for injury to, destruction of, or loss of natural
19 resources, and for the costs of any natural resource damage assessments within or outside of
20 the Hylebos Waterway Problem Areas;

21 f. liability arising from the future release or potential threat of a release of a
22 hazardous substance, pollutant, or contaminant at or in the Hylebos Waterway Problem Areas
23 after the date of lodging of this Consent Decree.

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1
2 25. Notwithstanding any other provision in this Consent Decree, the United States
3 reserves, and this Consent Decree is without prejudice to, the right to reopen or institute
4 proceedings against any individual Settling Defendant in this action or in a new action, and
5 EPA reserves and this Consent Decree is without prejudice to, the right to institute
6 administrative proceedings against any individual Settling Federal Agency, to reimburse the
7 United States for Response Costs, and/or to issue an administrative order to any individual
8 Settling Defendant or Settling Federal Agency seeking to compel that Settling Defendant or
9 Settling Federal Agency to perform response actions relating to the Hylebos Waterway
10 Problem Areas, and/or to reimburse the United States for additional costs of response if:

11 a. the United States finds that the individual Settling Defendant's, or EPA
12 finds that an individual Settling Federal Agency's, Certifications made in Section VIII of this
13 Decree are untrue or inaccurate in a material way; or

14 b. information is discovered that indicates that such individual Settling
15 Defendant or Settling Federal Agency contributed hazardous substances to the Hylebos
16 Waterway Problem Areas in such greater amount or such greater toxic or other hazardous
17 effects that EPA determines that the discovered information materially changes the basis for
18 entering into this settlement with the particular Settling Defendant or Settling Federal Agency.

19
20 26. Notwithstanding any other provision in this Consent Decree, the United States
21 reserves, and this Consent Decree is without prejudice to, the right to institute proceedings
22 against any individual Settling Defendant in this action or in a new action, and EPA reserves
23 and this Consent Decree is without prejudice to, the right to institute an administrative
24

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1 proceeding against any individual Settling Federal Agency, to reimburse the United States for
2 Response Costs, and/or to issue an administrative order to any individual Settling Defendant
3 or Settling Federal Agency seeking to compel that Settling Defendant or Settling Federal
4 Agency to perform response actions, relating to any other Problem Area or portion of the
5 CB/NT Site.

6 XII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

7 27. Settling Defendants covenant not to sue and agree not to assert any claims or
8 causes of action against the United States or its contractors or employees with respect to the
9 remedial action at the Hylebos Waterway Problem Areas or this Consent Decree, including,
10 but not limited to:

11 a. any direct or indirect claim for reimbursement from the EPA Hazardous
12 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42
13 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

14 b. any claim against the United States arising out of response activities at the
15 Hylebos Waterway Problem Areas, including any claim under the United States Constitution,
16 the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
17 amended, or at common law; or

18 c. any claim against the United States pursuant to Sections 107 and 113 of
19 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Hylebos Waterway Problem Areas.

20 28. Nothing in this Consent Decree shall be deemed to constitute approval or
21 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611,
22 or 40 C.F.R. Part 300.700(d).

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1 29. Settling Defendants covenant not to sue and agree not to assert any claims or
2 causes of action against each other with regard to the matters addressed by this Consent
3 Decree pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

4 XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

5 30. Nothing in this Consent Decree shall be construed to create any rights in, or grant
6 any cause of action to, any person not a Party to this Consent Decree. The United States and
7 each Settling Defendant each reserve any and all rights (including, but not limited to, any right
8 to contribution), defenses, claims, demands, and causes of action which each Party may have
9 with respect to any matter, transaction, or occurrence relating in any way to the Hylebos
10 Waterway Problem Areas or the CB/NT Site against any person not a party to this Consent
11 Decree, except as provided below. If any Settling Defendant seeks to bring a new action in
12 connection with the Hylebos Waterway Problem Areas, excepting an action brought by a
13 Settling Defendant against its insurance carrier, such Settling Defendant agrees to notify the
14 United States at least sixty (60) days prior to the commencement of the action, and
15 concurrently to provide to EPA all information in its possession relating to the person's
16 involvement at the Hylebos Waterway Problem Areas.

17 31. In any subsequent administrative or judicial proceeding initiated by the United
18 States for injunctive relief, recovery of Response Costs, or other relief relating to the Hylebos
19 Waterway Problem Areas, Settling Defendants shall not assert, and may not maintain, any
20 defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue
21 preclusion, claim-splitting, or other defenses based upon any contention that the claims raised
22 in the subsequent proceeding were or should have been brought in the instant action;
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1 provided, however, that nothing in this Paragraph affects the enforceability of the covenant
2 not to sue included in Paragraph 19 and the Covenant by EPA in Paragraph 20.

3 32. The Parties agree, and by entering this Consent Decree this Court finds, that each
4 Settling Defendant and the United States, including each Settling Federal Agency is entitled,
5 as of the date of entry of this Consent Decree, to protection from contribution actions or
6 claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for "matters
7 addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all
8 response actions taken and to be taken by the United States or by any other entity, and
9 Response Costs incurred in connection with the Hylebos Waterway Problem Areas, including
10 past and future Response Costs incurred and to be incurred by the United States, and past and
11 future Response Costs incurred by any other entities in connection with the Hylebos
12 Waterway Problem Areas, except claims for Settling Defendants' proportionate share of cost
13 overruns reserved against Settling Defendants that pay a 50% premium as set forth in Section
14 VI.6.c.(ii) of this Consent Decree. "Matters addressed" does not include any claims under
15 contractual indemnities or any other private contractual obligations.

16 XIV. RETENTION OF JURISDICTION

17 33. This Court shall retain jurisdiction over this matter for the purpose of interpreting
18 and enforcing the terms of this Consent Decree.

20 XV. INTEGRATION/APPENDICES

21 34. This Consent Decree and Appendices A, B, C, and D attached hereto constitute
22 the final, complete, and exclusive agreement and understanding among the Parties with
23 respect to the settlement embodied in this Consent Decree. The Parties acknowledge that

25 CONSENT DECREE
Commencement Bay Nearshore/Tideflats
26 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 there are no representations, agreements, or understandings relating to the settlement other
2 than those expressly contained in this Consent Decree. "Appendix A" is the list of Settling
3 Defendants and Settling Federal Agencies. "Appendices B and C" show the Total Payment
4 Amount each Settling Defendant and the United States on behalf of the Settling Federal
5 Agencies is required to pay pursuant to this Consent Decree and designates which premium
6 amount (i.e., 100% or 50%) each Settling Defendant and the United States on behalf of the
7 Settling Federal Agencies will pay. "Appendix C" also includes the formulae for calculating
8 the proportionate share of future Response Costs that each Settling Defendant and the United
9 States on behalf of the Settling Federal Agencies paying a 50% premium may pay if the future
10 Response Costs exceed \$56,056,407. "Appendix D" includes the escrow agreement for the
11 Escrow Account required in Paragraph 7 of this Consent Decree.

12 XVI. PUBLIC COMMENT

13 35. This Consent Decree shall be lodged with the Court for a period of not less than
14 thirty (30) days for public notice and comment. The United States shall file with the Court
15 any written comments received and the United States' response thereto. The United States
16 reserves the right to withdraw or withhold its consent if comments regarding the Consent
17 Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate,
18 improper, or inadequate. Settling Defendants consent to entry of this Consent Decree without
19 further notice, and the United States reserves the right to oppose an attempt by any person to
20 intervene in this civil action.

21 XVII. EFFECTIVE DATE

22 36. The effective date of this Consent Decree shall be the date of entry by this Court,
23 following public comment pursuant to Paragraph 35.

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25 CONSENT DECREE
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26 Superfund Site

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Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 XVIII. SIGNATORIES/SERVICE

2 37. Each undersigned representative of a Settling Defendant to this Consent Decree
3 and the Assistant Attorney General for the Environment and Natural Resources Division of
4 the United States Department of Justice, or her delegatee, certifies that he or she is fully
5 authorized to enter into the terms and conditions of this Consent Decree and to execute and
6 bind legally such party to this document.

7 38. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree
8 by this Court or to challenge any provision of this Consent Decree, unless the United States
9 has notified Settling Defendants in writing that it no longer supports entry of the Consent
10 Decree.

11 39. Each Settling Defendant shall identify, on the attached signature page, the name
12 and address of an agent who is authorized to accept service of process by mail on behalf of
13 that Party with respect to all matters arising under or relating to this Consent Decree. Settling
14 Defendants hereby agree to accept service including, but not limited to, service of a summons,
15 in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal
16 Rules of Civil Procedure and any applicable local rules of this Court.

17
18
19 SO ORDERED THIS 15 DAY OF Sept, 2003

20
21
22 
23 UNITED STATES DISTRICT JUDGE
24

25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, et al., relating to the Hylebos Waterway Problem Areas, within
3 the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

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FOR THE UNITED STATES OF AMERICA

Date: 2.4.03

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 1/30/03

Michael McNulty
MICHAEL J. MCNULTY
Attorney
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-1210

Date: _____

ROBERT H. FOSTER
Attorney
Environmental Defense Section
Environmental and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202
(303) 312-7320


CONSENT DECREE
Commencement Bay Nearshore/Tideflats
Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1
2
3 JOHN MCKAY
4 United States Attorney for the
5 Western District of Washington
6

7 Date: 2/26/07


8 BRIAN KIPNIS
9 Assistant United States Attorney
10 601 Union Street
11 Suite 5100
12 Seattle, WA 98101
13 (206) 553-7970
14
15
16
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1
2
3 Date:

22 July 2002


MICHAEL GEARHEARD

Director, Environmental Cleanup Office
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

4
5
6
7
8 Date:

July 22, 2002


LORI HOUCK CORA

Assistant Regional Counsel
U.S. Environmental Protection
Agency
1200 Sixth Avenue
Seattle, Washington 98101

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25 CONSENT DECREE

Commencement Bay Nearshore/Tideflats
Superfund Site

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27 Page 37

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

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FOR MARY JANE ANDERSON

Date: July 12, 2002

Mary Jane B. Anderson
MARY JANE ANDERSON
452 39th Avenue East
Seattle, WA 98112

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Inger C. Brockman
Montgomery Purdue Blankinship & Austin, PLLC.
5800 Bank of America Tower
701 Fifth Avenue
Seattle, WA 98104-7096
(206)682-7090

CONSENT DECREE
Commencement Bay Nearshore/Tideflats
Superfund Site

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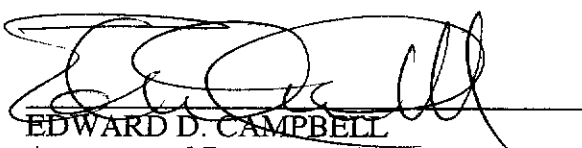
United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR B&L TRUCKING**
6 **CAMILLE FJETLAND,**
7 **and**
8 **EXECUTIVE BARK**

9 Date:

July 15, 2002

10 
11 EDWARD D. CAMPBELL
12 Attorney and Representative
13 9534 14th Avenue N.W.
14 Seattle, WA 98117

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16 Philip B. Grennan
17 Lee, Smart, Cook, Martin & Patterson, P.S., Inc.
18 1800 One Convention Place
19 701 Pike Street
20 Seattle, WA 98101

21 Edward D. Campbell
22 9534 14th Avenue N.W.
23 Seattle, WA 98117

24 CONSENT DECREE
25 Commencement Bay Nearshore/Tideflats
26 Superfund Site

27 Page 40
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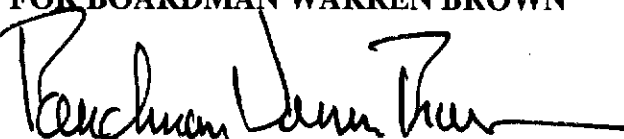
United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 FOR BOARDMAN WARREN BROWN

6 Date:

16 Aug 2002



7 BOARDMAN WARREN BROWN
8 550 Bradford
9 Pacadena, California 91105

10 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

11 Inger C. Brockman
12 Montgomery Purdue Blankinship & Austin, PLLC.
13 5800 Bank of America Tower
14 701 Fifth Avenue
15 Seattle, WA 98104-7096
16 (206)682-7090

25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site


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Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR BUFFELEN WOODWORKING CO. (a**
6 **Washington Corporation)**

7 Date: 7/15/02

8 
9 JOE D. GUIZZETTI
10 Chief Executive Officer
11 P.O. Box 1383
12 Tacoma, WA 98401

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Joe D. Guizzetti
15 Buffelen Woodworking Co.
16 P.O. Box 1383
17 Tacoma, WA 98401
18 (253) 627-1191

19 Loren R. Dunn
20 Riddell Williams P.C.
21 1001 Fourth Avenue
22 Ste. 4500
23 Seattle, WA 98154
24 (206) 624-3600

25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

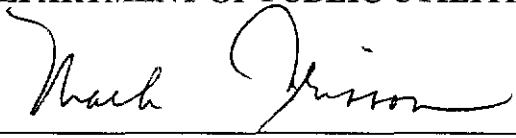
28 Page 42

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR CITY OF TACOMA**
6 **DEPARTMENT OF PUBLIC UTILITIES**

7 Date: 7-12-02

8 
9 MARK CRISSON
10 Director of Utilities
11 3628 South 35th Street
12 P.O. Box 11007
13 Tacoma, WA 98411
14 (253) 502-8200

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16 G.S. Karavitis
17 Sr. Assistant City Attorney
18 Office of the City Attorney
19 TPU Legal Section
20 3628 South 35th Street
21 P.O. Box 11007
22 Tacoma, WA 98411
23 (253) 502-8311

24 **Approved As To Form & Legality:**

25 
26 Senior Asst. City Attorney

27 **CONSENT DECREE**
28 Commencement Bay Nearshore/Tideflats
Superfund Site

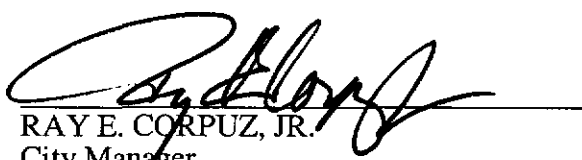
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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR CITY OF TACOMA** (including all departments,
6 divisions, and offices, except Tacoma Public
7 Utilities)

8 Date: 7/11/02

9 
10 RAY E. CORPUZ, JR.
11 City Manager
12 747 Market Street
13 Tacoma, WA 98402-3767

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Robin Jenkinson
16 City Attorney
17 747 Market Street
18 Room 1120
19 Tacoma, WA 98402-3767

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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

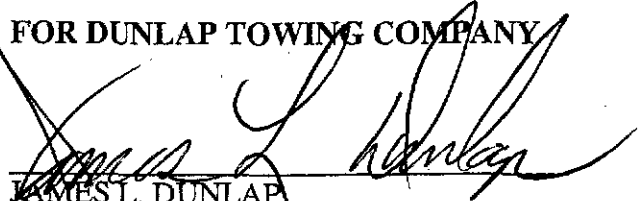
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

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FOR DUNLAP TOWING COMPANY

Date: 7/8/2002


JAMES L. DUNLAP
President
P.O. Box 593
La Conner, WA 98257

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

James L. Dunlap
President
P.O. Box 593
La Conner, WA 98257
(306) 476-3114

CONSENT DECREE
Commencement Bay Nearshore/Tideflats
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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
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3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

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FOR HYLEBOS MARINA, INC.

Date: 7-19-02

 pres
RON OLIVE
President
1940 Marine View Drive
Tacoma, WA 98422

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

James V. Handmacher
Bonneville, Viert, Morton &
McGoldrick
820 "A" Street, Ste. 600
Tacoma, WA 98401

CONSENT DECREE
Commencement Bay Nearshore/Tideflats
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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5
6 **FOR JUDY JOHNSON**

7 Date: 7-19-02

8 
9 JUDY JOHNSON
10 5310 S. Island Drive
11 Sumner, WA 98390

12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 James V. Handmacher
14 Bonneville, Viert, Morton &
15 McGoldrick
16 820 "A" Street, Ste. 600
17 Tacoma, WA 98401

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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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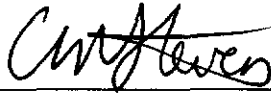
United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
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3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

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FOR LOUISIANA-PACIFIC CORP.

Date: July 15, 2002



CURTIS STEVENS
Vice-President and Chief Financial Officer
805 SW Broadway
Portland, OR 97205

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Bert P. Krages, II
Attorney at Law
6665 S.W. Hampton Street
Suite 200
Portland, Oregon 97223

CONSENT DECREE
Commencement Bay Nearshore/Tideflats
Superfund Site

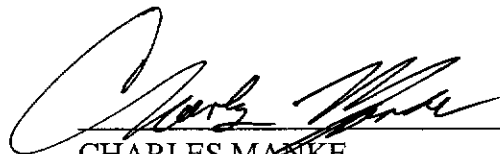
Page 48

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR MANKE LUMBER CO., INC.**

6
7 Date: 07/18/02

8 
9 CHARLES MANKE
10 MANKE LUMBER CO., INC.
11 1717 Marine View Drive
12 Tacoma, WA 98422

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Gregory A. Jacoby, WSBA #18326
15 McGavick & Graves, P.S.
16 1102 Broadway, Suite 500
17 Tacoma, WA 98402
18 (253) 627-1181

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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

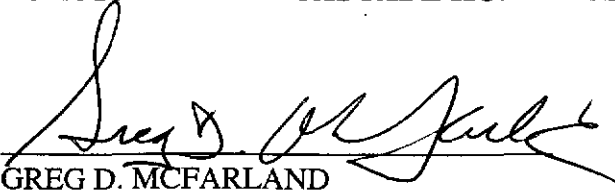
28 Page 49

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 FOR MCFARLAND CASCADE HOLDINGS, INC.

6
7 Date: 7/15/02

8 
9 GREG D. MCFARLAND
10 Vice President
11 1640 East Marc
12 Tacoma, WA 98421

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Bradley B. Jones
15 Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
16 1201 Pacific Avenue, Suite 200
17 Tacoma, Washington 98401-1157
18 (253) 620-6485
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site


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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
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Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR MODUTECH MARINE, INC.**

6
7 Date: 7-10-02

8 
9 CARL SWINDAHL
10 President
11 2218 Marine View Drive
12 Tacoma, WA 98422

13 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

14 Gregory A. Jacoby, WSBA #18326
15 McGavick & Graves, P.S.
16 1102 Broadway, Suite 500
17 Tacoma, WA 98402
18 (253) 627-1181
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR MURRAY PACIFIC CORP.**

6
7 Date: July 11, 2002

Alexander M. Polson, II

8 ALEXANDER M. POLSON, II.
9 Executive Vice President
10 1201 Pacific Avenue, Ste. 1750
11 Tacoma, WA 98402

12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Bradley B. Jones
14 Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
15 1201 Pacific Avenue, Suite 200
16 Tacoma, Washington 98401-1157
17 (253) 620-6485
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR OLIN CORPORATION**

6
7 Date: 7/15/02

my Curt M. Richards

8 CURT M. RICHARDS
9 ~~Corporate Director~~ VICE PRESIDENT
10 Environmental, Health and Safety
11 1186 Lower River Road
12 P.O. Box 248
13 Charleston, TN 37310

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Curt M. Richards
16 Vice President
17 Environmental, Health & Safety
18 Olin Corporation
19 1186 Lower River Road
20 P. O. Box 248
21 Charleston, TN 37310

22
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site


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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 FOR RON OLINE

6
7 Date: 7-19-02

8 
9 RON OLINE
3819 Taylor Way East
Tacoma, WA 98424

10
11 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

12 James V. Handmacher
13 Bonneville, Viert, Morton &
14 McGoldrick
15 820 "A" Street, Ste. 600
Tacoma, WA 98401

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25 CONSENT DECREE
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26 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR PAN PACIFIC TRADING**

6
7 Date: 1/16/02

L.T. Murray III
8 L. T. MURRAY III
9 President

10 1201 Pacific Avenue, Ste. 1750
11 Tacoma, WA 98402

12 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

13 Bradley B. Jones
14 Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
15 1201 Pacific Avenue, Suite 200
16 Tacoma, Washington 98401-1157
17 (253) 620-6485
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

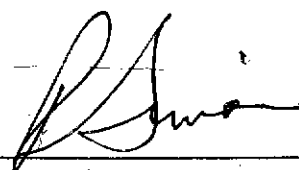
28 Page 55

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR JOSEPH SIMON & SONS and**
6 **RAIL & LOCOMOTIVE EQUIPMENT**
7 **COMPANY**
8 **(a Division of Joseph Simon & Sons)**

9 Date: 7-8-02

10 
11 PHILIP SIMON
12 President
13 2200 East River Street
14 Tacoma, WA 98421

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16 Philip Simon
17 2200 East River Street
18 Tacoma, WA 98421
19 (253) 272-9364

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21
22
23
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR SOUND REFINING, INC.**

6
7 Date:

7/16/02


GREG TURNER
President

2121 San Jacinto, LB 38
Dallas, TX 75201

11 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

12 Bradley B. Jones
13 Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
14 1201 Pacific Avenue, Suite 200
15 Tacoma, Washington 98401-1157
16 (253) 620-6485

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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site


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United States Department of Justice
Environmental & Natural Resources Division
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2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR SRS PROPERTIES** (a Washington General
6 Partnership)

7 Date: 7/11/02

8 
9 SOPHIE SUSSMAN, Partner
10 c/o Guy J. Sternal
11 Eisenhower & Carlson, PLLC
12 1200 Wells Fargo Plaza
13 1201 Pacific Avenue
14 Tacoma, WA 98402

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16 Guy J. Sternal
17 Eisenhower & Carlson, PLLC
18 1200 Wells Fargo Plaza
19 1201 Pacific Avenue
20 Tacoma, WA 98402
21 (252) 572-4500

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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

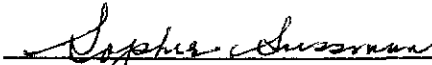
28 Page 58

United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR ESTATE OF LESLIE P. SUSSMAN**

6
7 Date: 7/11/02


8 SOPHIE SUSSMAN, Personal Representative
9 c/o Guy J. Sternal
10 Eisenhower & Carlson, PLLC
11 1200 Wells Fargo Plaza
12 1201 Pacific Avenue
13 Tacoma, WA 98402

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Guy J. Sternal
16 Eisenhower & Carlson, PLLC
17 1200 Wells Fargo Plaza
18 1201 Pacific Avenue
19 Tacoma, WA 98402
20 (252) 572-4500
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25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice
Environmental & Natural Resources Division
Environmental Enforcement Section
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 FOR SOPHIE SUSSMAN

6
7 Date: 7/11/02

Sophie Sussman

8 SOPHIE SUSSMAN

9 c/o Guy J. Sternal

10 Eisenhower & Carlson, PLLC

11 1200 Wells Fargo Plaza

12 1201 Pacific Avenue

13 Tacoma, WA 98402

14 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

15 Guy J. Sternal

16 Eisenhower & Carlson, PLLC

17 1200 Wells Fargo Plaza

18 1201 Pacific Avenue

19 Tacoma, WA 98402

20 (252) 572-4500

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25 CONSENT DECREE

26 Commencement Bay Nearshore/Tideflats
27 Superfund Site

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United States Department of Justice

Environmental & Natural Resources Division

Environmental Enforcement Section

P.O. Box 7611


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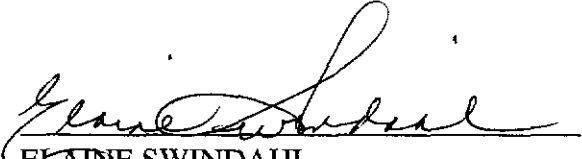
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2 States v. Mary Jane Anderson, relating to the Hylebos Waterway Problem Areas within the
3 Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce
4 County, Washington:

5 **FOR CARL AND ELAINE SWINDAHL**

6
7 Date: 7-10-02


8 CARL SWINDAHL
9 c/o Gregory A. Jacoby
10 McGavick & Graves, P.S.
11 1102 Broadway, Suite 500
12 Tacoma, WA 98402

13 Date: 7/10/02


14 ELAINE SWINDAHL
15 c/o Gregory A. Jacoby
16 McGavick & Graves, P.S.
17 1102 Broadway, Suite 500
18 Tacoma, WA 98402

19 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

20 Gregory A. Jacoby, WSBA #18326
21 McGavick & Graves, P.S.
22 1102 Broadway, Suite 500
23 Tacoma, WA 98402
24 (253) 627-1181

25 CONSENT DECREE
26 Commencement Bay Nearshore/Tideflats
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United States Department of Justice
Environmental & Natural Resources Division
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Washington, D.C. 20044

APPENDIX A
United States vs. Mary Jane Anderson, et al., Civ. No. _____

Settling Defendants and Settling Federal Agencies

Settling Defendants

1. Mary Jane Anderson
2. B&L Trucking
3. Camille Fjetland
4. Executive Bark
5. Boardman Warren Brown
6. Bufflen Woodworking Company*
7. City of Tacoma, Dept. of Public Utilities*
8. City of Tacoma*
9. Dunlap Towing Company
10. Hylebos Marina, Inc.*
11. Judy Johnson*
12. Louisiana-Pacific Corporation*
13. Manke Lumber Co., Inc.*
14. McFarland Cascade, Inc.
15. Modutech Marine, Inc.*
16. Murray Pacific Corporation

*** Identifies Owner Settling Defendants**

APPENDIX A

United States vs. Mary Jane Anderson, et al.

Settling Defendants and Settling Federal Agencies

Settling Defendants, cont'd.

17. Olin Corporation
18. Ron Oline*
19. Pan Pacific Trading
20. Joseph Simon & Sons*
21. Rail & Locomotive Equipment Company
22. Sound Refining, Inc.*
23. SRS Properties
24. Estate of Leslie P. Sussman
25. Sophie Sussman
26. Carl and Elaine Swindahl*

Settling Federal Agencies

27. Bonneville Power Administration
28. U.S. Department of Defense
29. U.S. Department of Navy
30. U.S. Department of Air Force
31. U.S. Army Corps of Engineers

*** Identifies Owner Settling Defendants**

**Appendix B to the Consent Decree in
United States vs. Mary Jane Anderson, et. al., Civ. No. _____**

Settling Defendant	Past Cost Payment	Future RD/RA Cost Payment	Total Future Cost Payment w. 100% Premium	Total Payment Amount
Anderson, Mary Jane	\$32,034	\$2,412	\$4,824	\$36,857
B&L Trucking	\$72,867	\$4,824	\$9,647	\$82,514
Brown, Boardman W.	\$32,034	\$2,412	\$4,824	\$36,857
Buffelen	\$384,651	\$250,733	\$438,857	\$823,508
City of Tacoma Public Utilities	\$248,880	\$112,368	\$208,842	\$457,722
Dunlap Towing	\$0	\$289,987	\$579,409	\$579,409
Hylebos Marina	\$36,798	\$4,824	\$9,647	\$46,445
Judy Johnson	\$10,011	\$73,660	\$146,015	\$156,026
Louisiana Pacific	\$142,149	\$9,647	\$19,295	\$161,444
Manke Lumber	\$194,824	\$28,942	\$57,884	\$252,708
McFarland-Cascade	\$18,019	\$2,412	\$4,824	\$22,843
Modutech	\$20,165	\$2,412	\$4,824	\$24,988
Murray Pacific	\$62,009	\$26,795	\$46,090	\$108,099
Olin Corporation	\$0	\$2,412	\$4,824	\$4,824
Pan Pacific	\$58,061	\$4,824	\$9,647	\$67,708
Ron Oline	\$10,011	\$73,660	\$146,015	\$156,026
Sound Refining	\$54,005	\$271,650	\$363,301	\$417,306
Sussman/SRS	\$316,101	\$1,027,397	\$1,828,131	\$2,144,232
Swindahl, Carl & Elaine	\$4,004	\$2,412	\$4,824	\$8,828
Total	\$1,696,622		\$3,891,724	\$5,588,346

**Appendix C to the Consent Decree in
United States vs. Mary Jane Anderson, et. al., Civ. No. _____**

Settling Parties	Past Cost Payment	Future RD/RA Cost Payment	Total Future Cost Payment w. 50% Premium	Total Payment Amount
City of Tacoma Public Works	\$140,096	\$213,528	\$319,567	\$459,663
Joseph Simon & Sons/R&L	\$77,794	\$530,829	\$786,485	\$864,280
United States	\$1,917,636	\$4,739,055	\$6,605,827	\$8,523,463
Total	\$2,135,526		\$7,711,880	\$9,847,406

If actual future total response costs exceed the cost estimate for future response cost of \$546,056,407 used in the allocation process, then the parties listed above shall contribute proportionally to the cost exceedance in the amount to be determined by the following formulas:

For City of Tacoma Public Works, the formula shall be

$$(\text{Actual Future Total Response Cost minus } \$56,056,407) \times 0.4397\% = \text{additional contribution}$$

For Joseph Simon & Sons/R&L, the formula shall be

$$(\text{Actual Future Total Response Cost minus } \$56,056,407) \times 1.06\% = \text{additional contribution}$$

For United States, the formula shall be

$$(\text{Actual Future Total Response Cost minus } \$56,056,407) \times 7.74\% = \text{additional contribution}$$

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**Appendix D to the Consent Decree in
United States vs. Mary Jane Anderson, et al., Civ. No. _____**

ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is made as of _____, 2002, by those parties, other than the Settling Federal Agencies, listed as "Settling Defendants" on Exhibit A to the Consent Decree filed with United States District Court for the Western District of Washington under Cause No. _____ ("Funding Parties") and KeyBank National Association ("Bank").

RECITALS

A. Certain Settling Defendants, including the Funding Parties hereunder, have entered into the Consent Decree with the United States with regard to payment of certain Response Costs in connection with the Hylebos Waterway Problem Areas, Commencement Bay Nearshore/Tideflats Superfund Site, Tacoma, Washington.

B. All capitalized terms not otherwise defined in this Agreement shall have the meanings given them in the Consent Decree.

C. Pursuant to the Consent Decree, the Funding Parties are required to contribute certain payments according to Appendices B or C to the Consent Decree ("Total Payment Amount").

D. Also pursuant to the Consent Decree, the Funding Parties have agreed to deposit the Total Payment Amount into an escrow account, the funds to be held therein for distribution at the direction of the United States Environmental Protection Agency ("EPA").

E. The Bank has agreed to serve as depositary for such escrow account and to accept appointment as escrow agent.

F. The Funding Parties and the Bank have agreed as set forth below concerning the establishment and operation of such escrow account.

AGREEMENT

1. **Establishment of Escrow Account.** The Bank is hereby appointed as the Escrow Agent for the Funding Parties and is designated the depositary for the Total Payment Amount delivered by the Funding Parties pursuant to the Consent Decree. The Bank shall establish the "Hylebos Waterway Problem Areas Escrow Account" ("Escrow Account"), into which shall be deposited the Total Payment Amount delivered by the Funding Parties.

2. **Purpose.** The exclusive purposes of the Escrow Account are to (a) receive payments of the Total Payment Amount from the Funding Parties and the Settling Federal Agencies, as provided in Paragraph 5 of the Consent Decree; (b) earn interest thereon; and (c) provide funds to pay response costs incurred by the EPA and other authorized parties for actions taken or to be taken in connection with the Hylebos Waterway Problem Areas. The

Funding Parties intend to irrevocably transfer and relinquish control and possession of the Total Payment Amount so as to qualify the Escrow Account as a "qualified settlement fund" pursuant to Internal Revenue Code Section 468B and the regulations promulgated pursuant thereto.

3. **Delivery of Funds.** In accordance with the payment provisions of the Consent Decree, the Funding Parties shall absolutely and irrevocably deliver to the Bank the Total Payment Amount required to be provided pursuant to the Consent Decree. The Bank shall provide the EPA with written notice of each deposit, including the identity of the Funding Party making the deposit and the amount thereof.

4. **Investment of Escrow Account.** The funds held in the Escrow Account shall be invested in such instruments that will generate non-taxable interest on the funds. The Bank and the Funding Parties agree that funds held in the Escrow Account shall be invested in the Victory Tax-Free Money Market Fund, an instrument which the Bank and Funding Parties agree is consistent with this Agreement. To the greatest degree feasible, the investment instruments shall (a) provide such liquidity as will permit immediate distribution of the funds upon EPA notice and approval of any disbursement; (b) provide a guaranteed rate of return sufficient to cover all expenses and fees of the Escrow Account without reduction of principal; and (c) protect against loss of the principal of the Total Payment Amount deposited in the Escrow Account.

5. **Interest on Funds.** Interest on the funds deposited shall accrue and be added to the principal amount to be distributed in accordance with the provisions of the Consent Decree and this Agreement.

6. **Distribution of Funds.** If the United States and parties performing the remedial action for the Hylebos Waterway Problem Areas sign a consent decree (hereinafter "RD/RA consent decree"), and that RD/RA consent decree is entered by the United States District Court, the funds in the Escrow Account shall be disbursed to EPA and/or such performing parties in accordance with directions set forth in the RD/RA consent decree. The EPA, in its sole discretion, shall determine whether the conditions for distribution of the Escrow Account proceeds for performance of response actions have been met. The EPA shall provide notice to the Bank as to the distribution of the funds in the Escrow Account pursuant to such form as the EPA and the Bank shall agree. The Funding Parties and Bank acknowledge and agree that the Bank shall make an initial distribution to the EPA Hylebos Waterway Problem Areas Special Account, in conformance with Paragraph 7.d. of the Consent Decree and to the address provided in Paragraph 10.b. of the Consent Decree, in the amount of \$434,733.00, when deposits to the Escrow Account equal or exceed such amount after payment of applicable fees.

7. **Protection from Third Party Claims.** The Bank and the Funding Parties shall take all reasonable steps to safeguard the Escrow Account from any competing claims from third-parties, including any creditors of the Funding Parties.

8. **Termination of Escrow Account.** As set forth in Paragraph 7.d. of the Consent Decree, the Escrow Account shall terminate upon the earlier of (a) eighteen (18) months from the Effective Date of the Consent Decree; or (b) distribution of the entire contents of the Escrow Account in accordance with Paragraph 6. above. In the event (a) applies, the Bank shall distribute all remaining funds, including accrued interest to EPA Hylebos Waterway Problem Areas Special Account.

9. **Fees to Bank.** The fees to be paid to the Bank for the services provided hereunder shall be reasonable and calculated as set forth on the Bank's standard schedule of service charges now in force or hereafter amended in the ordinary course of business. The Bank will provide such schedule to any of the Funding Parties upon request. Any fee paid to the Bank shall be deducted from the return generated by the investment of the Total Payment Amount. In no event shall principal be used to pay fees.

10. **Statements of Account.** Account statements shall be rendered by the Bank to the Funding Parties and the EPA once monthly, and shall show deposits, disbursements, and balances, and the dates thereof. Upon full distribution of the Escrow Account the Bank shall prepare a final accounting and provide such accounting to the Funding Parties and EPA at the addresses shown below.

11. **No Bank Responsibility for Consent Decree.** It is understood and agreed that the Bank shall not be liable or responsible to ascertain the terms or conditions of any provision of the aforementioned Consent Decree between the Funding Parties and the EPA. It is further understood and agreed that if any controversy arises between the EPA and the Funding Parties, or with any other party with respect to the subject matter of this Agreement, the Bank is authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to, or upon the authorization of, the EPA in accordance with the terms of this Agreement.

12. **Notices.** All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

Funding Parties	To the Addresses listed with the signatures below
The EPA	Environmental Protection Agency 1200 Sixth Ave. Seattle, WA 98101 Attn: Lori Houck Cora, Assistant Regional Counsel
The Bank	Linda J. Hayes, Relationship Manager KeyBank National Association 1101 Pacific Ave. Tacoma, WA 98402

13. **Title to Escrow Account.** Nothing in this Agreement shall be considered as vesting title in the Bank to the amount deposited in the Escrow Account, except as Escrow Agent for the Funding Parties for the purposes set forth herein.

14. **Effective Date.** This Agreement shall take effect upon the initial deposit of funds into the Escrow Account by any individual Funding Party and shall continue in full force until the funds have been fully disbursed.

15. **Modification.** This Agreement may not be amended, except by written modification signed by the parties hereto.